

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DALONDA LANAE LEWIS,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DUSABLE BAPTIST LEWIS,

Respondent-Appellant.

UNPUBLISHED

May 17, 2005

No. 257203

Genesee Circuit Court

Family Division

LC No. 92-093725-NA

Before: O'Connell, P.J., and Markey and Talbot, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i) and (g). We affirm.

Respondent argues that the trial court never obtained jurisdiction of the child. This issue is not properly before us because respondent never challenged the trial court's exercise of jurisdiction by direct appeal following entry of the initial dispositional order. Respondent may not now collaterally attack the trial court's exercise of jurisdiction in this appeal from the order terminating his parental rights. *In re Hatcher*, 443 Mich 426, 438-439, 444; 505 NW2d 834 (1993). The record establishes that the trial court obtained jurisdiction over the child through the mother's no-contest plea. By accepting the mother's plea, the trial court was authorized to make appropriate orders concerning respondent as the interests of the child dictated. *In re CR*, 250 Mich App 185, 202; 646 NW2d 506 (2002).

Respondent next argues that there was insufficient evidence to establish the statutory grounds for termination of his parental rights. We disagree. The existence of a statutory ground for termination must be proven by clear and convincing evidence. *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989). We review the trial court's findings of fact for clear error. MCR 3.977(J); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i) and (g), which provide that termination is appropriate under the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial disposition order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

With regard to § 19b(3)(c)(i), it is undisputed that the initial adjudication was based on the mother's plea of no contest to the original petition, which did not contain any allegations involving respondent other than to state that paternity had not been established, a circumstance that was subsequently remedied.¹ Because none of the conditions that led to the initial adjudication related to respondent, the court erred in relying on § 19b(3)(c)(i) as a basis for terminating respondent's parental rights.

Nevertheless, the trial court did not clearly err in finding that § 19b(3)(g) was established by clear and convincing evidence. It is undisputed that respondent tested positive for cocaine in April 2001. While he submitted six negative drug screens between December 6, 2001, and January 28, 2002, those screens were not random, and he did not submit to any further screens. Random screens were necessary to ensure that respondent did not have a continuing drug problem. The trial court was justified in requiring respondent to submit to random drug screens and in subsequently finding that he violated the parent-agency agreement by failing to comply with this requirement.

Although respondent was employed from December 16, 2002, until October 3, 2003, he failed to provide verification of any other employment during the nearly four-year duration of this case. Once respondent lost his job, he ceased all contact with the agency and the child, and did not reappear until March 2004. Further, respondent did not have stable housing at any time during the pendency of these proceedings. The trial court noted that evidence concerning the need for anger management classes was conflicting. However, respondent was ordered to take them, and by failing to do so, he failed to comply with the parent-agency agreement, although this was only a small factor in the trial court's decision to terminate his parental rights.

¹ The petition alleged that the mother failed to obtain prenatal care, did not have a stable home environment, had been neglectful of her children's medical needs, and had several other children in relative placement or guardianship under court supervision.

In light of the evidence that respondent did not have a steady job or suitable housing, intermittently ceased all contact with the agency and the child, and failed to comply with efforts to determine whether he abused controlled substances, the trial court did not clearly err in terminating respondent's parental rights under § 19b(3)(g).

Affirmed.

/s/ Peter D. O'Connell

/s/ Jane E. Markey

/s/ Michael J. Talbot